Minnesota HIE Study MHRA Modifications: Option #1 ("full alignment")

Alternative A: Strike MHRA for HIPAA covered entities and replace with HIPAA (Short Version)

A new section in Minn. Stat., Ch. 144, is added to read:

**Section 144.XXX. Privacy of protected health information**

Subdivision 1. **Definitions.** For purposes of this section, the definitions in Code of Federal Regulations, title 45, parts 160-164 apply.

Subd. 2. **Privacy.** Notwithstanding any law to the contrary, for a provider that is a HIPAA covered entity or its business associate, the privacy of patient information shall be governed by the HIPAA Privacy Regulations in Code of Federal Regulations title 45, chapter A, subchapter C, part 164, subpart E, sections 164.500 to 164.534, and the Minnesota Health Records Act does not apply.

Subd. 3. **Relationship to other laws.** Nothing in this section shall be construed to:
(a) authorize the disclosure of individually identifiable health information if disclosure is restricted by Code of Federal Regulations, title 42, part 2;
(b) compel disclosure of protected health information; or
(c) require a government entity to provide access to individually identifiable health information in response to a request for public data under chapter 13.

As part of Alternative A, align MN law with HIPAA for insurance consent purposes

1. Repeal section 13.05, subdivision 4a(7)

2. Section 72A.501, subdivision 4, is amended to read:
   **Subd. 4. Authorization; noninsurers.** If an authorization is submitted to an insurer, insurance-support organization, or insurance agent by a person other than an insurer, insurance-support organization, or insurance agent, the authorization must be dated, signed by the person, and obtained one year or less before the date a disclosure is sought. Unless otherwise required by law, this authorization does not expire, unless an expiration date or event is specified in the authorization.

3. Section 72A.502, subdivisions 6 and 12, are amended to read:
   **Subd. 6. Other laws or order.** Personal or privileged information may be disclosed without a written authorization if permitted or required by another state or federal law or regulation or in

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1 This alternative replaces all of the MHRA with HIPAA, for covered entities. No change for other providers.
response to a facially valid administrative or judicial order, including a search warrant or subpoena.

Subd. 12. Notice. Whenever an insurer, insurance agent, or insurance-support organization discloses personal or privileged information about a person that requires the written authorization of that person under this section, the insurer, insurance agent, or insurance-support organization shall notify that person in writing within ten days of the date the information was disclosed. The notification must specify the identity of the person to whom information was disclosed and the nature and substance of the information that was disclosed. A notice is not required to be given under this subdivision if an insurer is disclosing personal information for underwriting purposes to another insurer, or to an insurance-support organization if the person had signed an authorization authorizing the disclosure. A notice is not required under this subdivision if the disclosing entity is subject to and complies with the provisions in Code of Federal Regulations title 45, chapter A, subchapter C, part 164, subpart D, sections 164.400 to 164.414.

As part of Alternative A, align relevant consent provisions in the Data Practices Act with HIPAA

Section 13.05, subdivision 4, is amended to read:

Subd. 4. Limitations on collection and use of data. Private or confidential data on an individual shall not be collected, stored, used, or disseminated by government entities for any purposes other than those stated to the individual at the time of collection in accordance with section 13.04, except as provided in this subdivision.

(a) Data collected prior to August 1, 1975, and which have not been treated as public data, may be used, stored, and disseminated for the purposes for which the data was originally collected or for purposes which are specifically approved by the commissioner as necessary to public health, safety, or welfare.

(b) Private or confidential data may be used and disseminated to individuals or entities specifically authorized access to that data by state, local, or federal law enacted or promulgated after the collection of the data.

(c) Private or confidential data may be used and disseminated to individuals or entities subsequent to the collection of the data when the responsible authority maintaining the data has requested approval for a new or different use or dissemination of the data and that request has been specifically approved by the commissioner as necessary to carry out a function assigned by law.

(d) Private data may be used by and disseminated to any person or entity if permitted or required under the Health Insurance Portability and Accountability Act of 1996, title II, subtitle F, as amended, including federal regulations adopted under that act or if the individual subject or subjects of the data have given their informed consent. Whether a data subject has given informed consent shall be determined by rules of the commissioner.

The responsible authority may require a person requesting copies of data under this paragraph to pay the actual costs of making and certifying the copies.

(e) Private or confidential data on an individual may be discussed at a meeting open to the public to the extent provided in section 13D.05.
Section 13.3805, subdivision 1, is amended to read:

Subdivision 1. **Health data generally.** (a) **Definitions.** As used in this subdivision:

1. "Commissioner" means the commissioner of health.

2. "Health data" are data on individuals created, collected, received, or maintained by the Department of Health, political subdivisions, or statewide systems relating to the identification, description, prevention, and control of disease or as part of an epidemiologic investigation the commissioner designates as necessary to analyze, describe, or protect the public health.

(b) **Data on individuals.** (1) Health data are private data on individuals. Notwithstanding section 13.05, subdivision 9, health data may not be disclosed except as provided in this subdivision and section 13.04.

(2) The commissioner or a community health board as defined in section 145A.02, subdivision 5, may disclose health data to the data subject's physician as necessary to locate or identify a case, carrier, or suspect case, to establish a diagnosis, to provide treatment, to identify persons at risk of illness, or to conduct an epidemiologic investigation.

(3) With the approval of the commissioner, health data may be disclosed to the extent necessary to assist the commissioner to locate or identify a case, carrier, or suspect case, to alert persons who may be threatened by illness as evidenced by epidemiologic data, to control or prevent the spread of serious disease, or to diminish an imminent threat to the public health.

4. If permitted or required under the Health Insurance Portability and Accountability Act of 1996, title II, subtitle F, as amended, including federal regulations adopted under that act.

(c) **Health summary data.** Summary data derived from data collected under section 145.413 may be provided under section 13.05, subdivision 7.

Section 13.384, subdivision 3, is amended to read:

Subd. 3. **Classification of medical data.** Unless the data is summary data or a statute specifically provides a different classification, medical data are private but are available only to the subject of the data as provided in sections 144.291 to 144.298, and shall not be disclosed to others except:

(a) pursuant to section 13.05;

(b) pursuant to section 253B.0921;

(c) pursuant to a valid court order;

(d) to administer federal funds or programs;

(e) to the surviving spouse, parents, children, siblings, and health care agent of a deceased patient or client or, if there are no surviving spouse, parents, children, siblings, or health care agent to the surviving heirs of the nearest degree of kindred;

(f) to communicate a patient's or client's condition to a family member, health care agent, or other appropriate person in accordance with acceptable medical practice, unless the patient or client directs otherwise; or

(g) as otherwise required by law; or

(h) as permitted or required under the Health Insurance Portability and Accountability Act of 1996, title II, subtitle F, as amended, including federal regulations adopted under that act.

Section 13.386, subdivision 3, is amended to read:

Subd. 3. **Collection, storage, use, and dissemination of genetic information.** (a) Unless otherwise expressly provided by law, genetic information about an individual:

1. may be collected by a government entity, as defined in section 13.02, subdivision 7a, or any other person only with the written informed consent of the individual;

2. may be used only for purposes to which the individual has given written informed consent;

3. may be stored only for a period of time to which the individual has given written informed consent; and
(4) may be disseminated only:
(i) with the individual's written informed consent; or
(ii) if necessary in order to accomplish purposes described by clause (2). A consent to disseminate
genetic information under item (i) must be signed and dated. Unless otherwise provided by law, such a
consent is valid for one year or for a lesser period specified in the consent.
(b) Newborn screening activities conducted under sections 144.125 to 144.128 are subject to paragraph
(a). Other programs and activities governed under section 144.192 are not subject to paragraph (a).
(c) Notwithstanding clause (a), genetic information may be collected, used, stored, or disseminated as
permitted or required under the Health Insurance Portability and Accountability Act of 1996, title II,
subtitle F, as amended, including federal regulations adopted under that act.

Minnesota Statutes, section 13.46, subdivision 2, is amended to read:
Subd. 2. General. (a) Data on individuals collected, maintained, used, or disseminated by the welfare
system are private data on individuals, and shall not be disclosed except:
(1) according to section 13.05;
(2) according to court order;
(3) according to a statute specifically authorizing access to the private data;
... (31) to a health care provider governed by sections 144.291 to 144.298, to the extent necessary to
coordinate services.
(32) to the chief administrative officer of a school to coordinate services for a student and family; data
that may be disclosed under this clause are limited to name, date of birth, gender, and address; or
(33) to county correctional agencies to the extent necessary to coordinate services and diversion
programs; data that may be disclosed under this clause are limited to name, client demographics,
program, case status, and county worker information.
(34) as permitted or required under the Health Insurance Portability and Accountability Act of 1996, title
II, subtitle F, as amended, including federal regulations adopted under that act.

Private classification for all health records held by government entities

A new section in Minn. Stat., Ch. 13, is added to read:
Section 13.388. Privacy of health records. A health record, as defined in section 144.292, subdivision
2(c), is private data on individuals. Notwithstanding section 13.05, a health record may not be disclosed
except as provided in this chapter.

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2 Consider adding a catch-all private classification for health records that applies to all government entities
whether or not they are HIPAA covered entities or not.
Alternative B: Repeal MHRA provisions related to provider disclosure and replace with relevant HIPAA provisions

144.291 MINNESOTA HEALTH RECORDS ACT. ³

Subdivision 1. Short title Privacy of protected health information. Sections 144.291 to 144.298 may be cited as the "Minnesota Health Records Act." The Minnesota Health Records Act does not apply to the disclosure of health records by a provider if that disclosure is in compliance with 45 CFR 164.500 to 164.514, irrespective of whether the provider is a covered entity under HIPAA.

Section 144.291, subdivision 2, is amended to read: Subd. 2. Definitions. ⁴ For the purposes of sections 144.291 to 144.298, the following terms have the meanings given.

(a) "Group purchaser" has the meaning given in section 62J.03, subdivision 6.
(b) "Health information exchange" means a legal arrangement between health care providers and group purchasers to enable and oversee the business and legal issues involved in the electronic exchange of health records between the entities for the delivery of patient care.
(c) "Health record" means any information, whether oral or recorded in any form or medium, that relates to the past, present, or future physical or mental health or condition of a patient; the provision of health care to a patient; or the past, present, or future payment for the provision of health care to a patient information that is protected health information as defined in HIPAA.
(d) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, title II, subtitle F, as amended, including federal regulations adopted under that act.
(e) Identifying information" means the patient's name, address, date of birth, gender, parent's or guardian's name regardless of the age of the patient, and other nonclinical data which can be used to uniquely identify a patient.
(f) "Individually identifiable form" means a form in which the patient is or can be identified as the subject of the health records.
(g) "Medical emergency" means medically necessary care which is immediately needed to preserve life, prevent serious impairment to bodily functions, organs, or parts, or prevent placing the physical or mental health of the patient in serious jeopardy.
(h) "Patient" means a natural person who has received health care services from a provider for treatment or examination of a medical, psychiatric, or mental condition, the surviving spouse and parents of a deceased patient, or a person the patient appoints in writing as a representative, including a health care agent acting according to chapter 145C, unless the authority of the agent has been limited by the principal's health care directive. Except for minors who have received health care services under sections 144.341 to 144.347, in the case of a minor, patient includes a parent or guardian, or a person acting as a parent or guardian in the absence of a parent or guardian.
(i) "Patient information service" means a service providing the following query options: a record locator service as defined in paragraph (i) or a master patient index or clinical data repository as defined in section 62J.498, subdivision 1.
(j) "Provider" or "health care provider" has the meaning given in Code of Federal Regulations title 45, chapter A, subchapter C, part 160, subpart A, section 160.103, means:

³ Minn. Stat. §§ 144.296 and 144.297 could also be repealed for full HIPAA alignment, but there are not obvious conflicts.
⁴ Aligns MN law and HIPAA definitions.
(2) a home care provider licensed under section 144A.471;
(3) a health care facility licensed under this chapter or chapter 144A; and
(4) a physician assistant registered under chapter 147A.

(i) (k) "Record locator service" means an electronic index of patient identifying information that directs
providers in a health information exchange to the location of patient health records held by providers
and group purchasers.

(k) (l) "Related health care entity" means an affiliate, as defined in section 144.6521, subdivision 3,
paragraph (b), of the provider releasing the health records.

144.292 PATIENT RIGHTS. 5
Subdivision 1. Scope. Patients have the rights specified in this section regarding the treatment the
patient receives and the patient's health record.

Subd. 2. Patient access. Upon request, a provider shall supply to a patient complete and current
information possessed by that provider concerning any diagnosis, treatment, and prognosis of the
patient in terms and language the patient can reasonably be expected to understand.

Subd. 3. Additional patient rights. A patient's right specified in this section and sections 144.293 to
144.298 are in addition to the rights specified in sections 144.651 and 144.652 and any other provision
of law relating to the access of a patient to the patient's health records.

Subd. 4. Notice of rights; information on release. A provider shall provide to patients, in a clear and
conspicuous manner, a written notice concerning practices and rights with respect to access to health
records. The notice must include an explanation of:

(1) disclosures of health records that may be made without the written consent of the patient, including
the type of records and to whom the records may be disclosed; and

(2) the right of the patient to have access to and obtain copies of the patient's health records and other
information about the patient that is maintained by the provider.

The notice requirements of this subdivision are satisfied if the content and distribution requirements
described in Code of Federal Regulations title 45, chapter A, subchapter C, part 164, subpart E, section
CFR 164.520 are included, the notice is included with the notice and copy of the patient and resident bill
of rights under section 144.652, or it is displayed prominently in the provider’s place of business. The
commissioner of health shall develop the notice required in this subdivision and publish it in the State
Register.

Subd. 5. Copies of health records to patients. Except as provided in section 144.296, upon a patient's
written request, a provider, at a reasonable cost to the patient, shall promptly furnish to the patient:

(1) copies of the patient's health record, including but not limited to laboratory reports, x-rays,
prescriptions, and other technical information used in assessing the patient's health conditions; or

5 Other than the Notice of Rights, this section is not impacted in aligning the MHRA with HIPAA as related to
disclosures by providers.
(2) the pertinent portion of the record relating to a condition specified by the patient.

With the consent of the patient, the provider may instead furnish only a summary of the record. The provider may exclude from the health record written speculations about the patient's health condition, except that all information necessary for the patient's informed consent must be provided.

Subd. 6. **Cost.** (a) When a patient requests a copy of the patient's record for purposes of reviewing current medical care, the provider must not charge a fee.

(b) When a provider or its representative makes copies of patient records upon a patient’s request under this section, the provider or its representative may charge the patient or the patient’s representative no more than 75 cents per page, plus $10 for time spent retrieving and copying the records, unless other law or a rule or contract provide for a lower maximum charge. This limitation does not apply to x-rays. The provider may charge a patient no more than the actual cost of reproducing x-rays, plus no more than $10 for the time spent retrieving and copying the x-rays.

(c) The respective maximum charges of 75 cents per page and $10 for time provided in this subdivision are in effect for calendar year 1992 and may be adjusted annually each calendar year as provided in this subdivision. The permissible maximum charges shall change each year by an amount that reflects the change, as compared to the previous year, in the Consumer Price Index for all Urban Consumers, Minneapolis-St. Paul (CPI-U), published by the Department of Labor.

(d) A provider or its representative may charge the $10 retrieval fee, but must not charge a per page fee to provide copies of records requested by a patient or the patient’s authorized representative if the request for copies of records is for purposes of appealing a denial of Social Security disability income or Social Security disability benefits under title II or title XVI of the Social Security Act; except that no fee shall be charged to a person who is receiving public assistance, who is represented by an attorney on behalf of a civil legal services program or a volunteer attorney program based on indigency. For the purpose of further appeals, a patient may receive no more than two medical record updates without charge, but only for medical record information previously not provided. For purposes of this paragraph, a patient’s authorized representative does not include units of state government engaged in the adjudication of Social Security disability claims.

Subd. 7. **Withholding health records from patient.** (a) If a provider, as defined in section 144.291, subdivision 2, paragraph (h), clause (1), reasonably determines that the information is detrimental to the physical or mental health of the patient, or is likely to cause the patient to inflict self harm, or to harm another, the provider may withhold the information from the patient and may supply the information to an appropriate third party or to another provider, as defined in section 144.291, subdivision 2, paragraph (h), clause (1). The other provider or third party may release the information to the patient.

(b) A provider, as defined in section 144.291, subdivision 2, paragraph (h), clause (3), shall release information upon written request unless, prior to the request, a provider, as defined in section 144.291, subdivision 2, paragraph (h), clause (1), has designated and described a specific basis for withholding the information as authorized by paragraph (a).
Subd. 8. Form. By January 1, 2008, the Department of Health must develop a form that may be used by a patient to request access to health records under this section. A form developed by the commissioner must be accepted by a provider as a legally enforceable request under this section.

144.293 RELEASE OR DISCLOSURE OF HEALTH RECORDS.  

Subdivision 1. Release or disclosure of health records. Health records can be released or disclosed as specified in subdivisions 2 to 9 and sections 144.294 and 144.295.

Subd. 2. Patient consent to release Disclosure of patient records. A provider may disclose health records, if that disclosure is in compliance with Code of Federal Regulations title 45, chapter A, subchapter C, part 164, subpart E, sections 164.500 to 164.534, irrespective of whether the provider is a covered entity under HIPAA, or if the disclosure is permitted or required by other federal or state law, or a person who receives health records from a provider may not release a patient's health records to a person without:
(1) a signed and dated consent from the patient or the patient's legally authorized representative authorizing the release;
(2) specific authorization in law; or
(3) a representation from a provider that holds a signed and dated consent from the patient authorizing the release.

Subd. 3. Release from one provider to another. A patient's health record, including, but not limited to, laboratory reports, x-rays, prescriptions, and other technical information used in assessing the patient's condition, or the pertinent portion of the record relating to a specific condition, or a summary of the record, shall promptly be furnished to another provider upon the written request of the patient. The written request shall specify the name of the provider to whom the health record is to be furnished. The provider who furnishes the health record or summary may retain a copy of the materials furnished. The patient shall be responsible for the reasonable costs of furnishing the information.

Subd. 4. Duration of consent. Except as provided in this section, a consent is valid for one year or for a period specified in the consent or for a different period provided by law.

Subd. 5. Exceptions to consent requirement. (a) This section does not prohibit the release of health records:
(1) for a medical emergency when the provider is unable to obtain the patient's consent due to the patient's condition or the nature of the medical emergency;
(2) to other providers within related health care entities when necessary for the current treatment of the patient; or
(3) to a health care facility licensed by this chapter, chapter 144A, or to the same types of health care facilities licensed by this chapter and chapter 144A that are licensed in another state when a patient:
(i) is returning to the health care facility and unable to provide consent; or
(ii) who resides in the health care facility, has services provided by an outside resource under Code of Federal Regulations, title 42, section 483.75(h), and is unable to provide consent.

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6 Align more stringent consent requirements with HIPAA - Consent not required for purposes of treatment, payment, or health care operations and other permitted or required disclosures.

7 It is not necessary to have duration of consent when provider disclosures are aligned with HIPAA.
(b) A provider may release a deceased patient's health care records to another provider for the purposes of diagnosing or treating the deceased patient's surviving adult child.⁸

Subd. 6. Consent does not expire. Notwithstanding subdivision 4, if a patient explicitly gives informed consent to the release of health records for the purposes and restrictions in clause (1), (2), or (3), the consent does not expire after one year for:

(1) the release of health records to a provider who is being advised or consulted with in connection with the releasing provider's current treatment of the patient;

(2) the release of health records to an accident and health insurer, health service plan corporation, health maintenance organization, or third-party administrator for purposes of payment of claims, fraud investigation, or quality of care review and studies, provided that:

(i) the use or release of the records complies with sections 72A.49 to 72A.505;

(ii) further use or release of the records in individually identifiable form to a person other than the patient without the patient's consent is prohibited; and

(iii) the recipient establishes adequate safeguards to protect the records from unauthorized disclosure, including a procedure for removal or destruction of information that identifies the patient; or

(3) the release of health records to a program in the welfare system, as defined in section 13.46, to the extent necessary to coordinate services for the patient.⁹

Subd. 7. Exception to consent. Subdivision 2 does not apply to the release of health records to the commissioner of health or the Health Data Institute under chapter 62J, provided that the commissioner encrypts the patient identifier upon receipt of the data.

Subd. 8. Record locator or patient information service. (a) A provider or group purchaser may release patient identifying information and information about the location of the patient's health records to a record locator or patient information service without consent from the patient, unless the patient has elected to be excluded from the service under paragraph (d). The Department of Health may not access the record locator or patient information service or receive data from the service. Only a provider may have access to patient identifying information in a record locator or patient information service. Except in the case of a medical emergency, a provider participating in a health information exchange using a record locator or patient information service does not have access to patient identifying information and information about the location of the patient's health records unless the patient specifically consents to the access. A consent does not expire but may be revoked by the patient at any time by providing written notice of the revocation to the provider.

(b) A health information exchange maintaining a record locator or patient information service must maintain an audit log of providers accessing information in the service that at least contains information on:

(1) the identity of the provider accessing the information;

(2) the identity of the patient whose information was accessed by the provider; and

(3) the date the information was accessed.

(c) No group purchaser may in any way require a provider to participate in a record locator or patient information service as a condition of payment or participation.

⁸ Exceptions to consent are unnecessary when provider disclosures are aligned with HIPAA.

⁹ Consent expiration is unnecessary when provider disclosures are aligned with HIPAA.
(d) A provider or an entity operating a record locator or patient information service must provide a mechanism under which patients may exclude their identifying information and information about the location of their health records from a record locator or patient information service. At a minimum, a consent form that permits a provider to access a record locator or patient information service must include a conspicuous check-box option that allows a patient to exclude all of the patient’s information from the service. A provider participating in a health information exchange with a record locator or patient information service who receives a patient’s request to exclude all of the patient's information from the service or to have a specific provider contact excluded from the service is responsible for removing that information from the service.°

Subd. 9. Documentation of release. (a) In cases where a provider releases health records without patient consent as authorized by law, an individual has the right to receive an accounting in accordance with Code of Federal Regulations, title 45, chapter A, subchapter C, part 164, subpart E, section 164.528 the release must be documented in the patient's health record. In the case of a release under section 144.294, subdivision 2, the documentation must include the date and circumstances under which the release was made, the person or agency to whom the release was made, and the records that were released.

(b) When a health record is released using a representation from a provider that holds a consent from the patient, the releasing provider shall document:

1. the provider requesting the health records;
2. the identity of the patient;
3. the health records requested; and
4. the date the health records were requested.

Subd. 10. Warranties regarding consents, requests, and disclosures. (a) When requesting health records using consent, a person warrants that the consent:

1. contains no information known to the person to be false; and
2. accurately states the patient's desire to have health records disclosed or that there is specific authorization in law.

(b) When requesting health records using consent, or a representation of holding a consent, a provider warrants that the request:

1. contains no information known to the provider to be false;
2. accurately states the patient's desire to have health records disclosed or that there is specific authorization in law; and
3. does not exceed any limits imposed by the patient in the consent.

° Updates record locator provisions to align with provider disclosures under HIPAA.

11 Aligns documentation and warranty requirements related to provider disclosures with HIPAA.
(c) When disclosing health records, a person releasing health records warrants that the person:

(1) has complied with the requirements of this section regarding disclosure of health records;

(2) knows of no information related to the request that is false; and

(3) has complied with the limits set by the patient in the consent.\(^\text{12}\)

144.294 RECORDS RELATING TO MENTAL HEALTH.\(^\text{13}\)

Subdivision 1. Provider inquiry. Upon the written request of a spouse, parent, child, or sibling of a patient being evaluated for or diagnosed with mental illness, a provider shall inquire of a patient whether the patient wishes to authorize a specific individual to receive information regarding the patient’s current and proposed course of treatment. If the patient so authorizes, the provider shall communicate to the designated individual the patient’s current and proposed course of treatment. Section 144.293, subdivisions 2 and 4, apply to consents given under this subdivision.

Subd. 2. Disclosure to law enforcement agency. Notwithstanding section 144.293, subdivisions 2 and 4, a

(a) A provider may disclose health records relating to a patient’s mental health to a law enforcement agency in accordance with Code of Federal Regulations, title 45, chapter A, subchapter C, part 164, subpart E, section 164.512, clause (f).

(b) A provider must disclose health records relating to a patient’s mental health to a law enforcement agency if the law enforcement agency provides the name of the patient and communicates that the (1) patient is currently involved in an emergency interaction with the law enforcement agency; and (2) disclosure of the health records is necessary to protect the health or safety of the patient or another person. The scope of disclosure under this clause is limited to the minimum necessary for law enforcement to respond to the emergency. A law enforcement agency that obtains health records under this clause shall maintain a record of the requestor, the provider of the information, and the patient’s name. Health records obtained by a law enforcement agency are private data on individuals as defined in section 13.02, subdivision 12, and must not be used by law enforcement for any other purpose.\(^\text{14}\)

if the law enforcement agency provides the name of the patient and communicates that the:

(1) patient is currently involved in an emergency interaction with the law enforcement agency; and

(2) disclosure of the records is necessary to protect the health or safety of the patient or of another person.

The scope of disclosure under this subdivision is limited to the minimum necessary for law enforcement to respond to the emergency. A law enforcement agency that obtains health records under this subdivision shall maintain a record of the requestor, the provider of the information, and the patient’s-

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\(^{12}\) Aligns warranty requirements related to provider disclosures with HIPAA.

\(^{13}\) Aligns provider disclosures related to law enforcement with HIPAA.

\(^{14}\) A provider MAY disclose to law enforcement pursuant to 164.512(f). Clause (b) is a requirement to disclose PHI to law enforcement in certain emergency interaction situations. HIPAA does not have this requirement, but may want to consider keeping that, as shown.
name. Health records obtained by a law enforcement agency under this subdivision are private data on individuals as defined in section 13.02, subdivision 12, and must not be used by law enforcement for any other purpose.

Subd. 3. Records release for family and caretaker; mental health care. 15 (a) Notwithstanding section 144.293, subdivisions 2 and 4, a provider providing mental health care and treatment may disclose health record information in accordance with Code of Federal Regulations, title 45, chapter A, subchapter C, part 164, subpart E, section 164.510, clause (b), described in paragraph (b) about a patient to a family member of the patient or other person who requests the information if:

(1) the request for information is in writing;

(2) the family member or other person lives with, provides care for, or is directly involved in monitoring the treatment of the patient;

(3) the involvement under clause (2) is verified by the patient’s mental health care provider, the patient’s attending physician, or a person other than the person requesting the information, and is documented in the patient’s medical record;

(4) before the disclosure, the patient is informed in writing of the request, the name of the person requesting the information, the reason for the request, and the specific information being requested;

(5) the patient agrees to the disclosure, does not object to the disclosure, or is unable to consent or object, and the patient’s decision or inability to make a decision is documented in the patient’s medical record; and

(6) the disclosure is necessary to assist in the provision of care or monitoring of the patient’s treatment.

(b) The information disclosed under this paragraph is limited to diagnosis, admission to or discharge from treatment, the name and dosage of the medications prescribed, side effects of the medication, consequences of failure of the patient to take the prescribed medication, and a summary of the discharge plan.

(c) If a provider reasonably determines that providing information under this subdivision would be detrimental to the physical or mental health of the patient or is likely to cause the patient to inflict self-harm or to harm another, the provider must not disclose the information.

(d) This subdivision does not apply to disclosures for a medical emergency or to family members as authorized or required under subdivision 1 or section 144.293, subdivision 5, clause (1).

144.295 DISCLOSURE OF HEALTH RECORDS FOR EXTERNAL RESEARCH. 16

Subdivision 1. Methods of release. (a) Notwithstanding section 144.293, subdivisions 2 and 4, health records may be used or disclosed for research in accordance with Code of Federal Regulations, title 45, chapter A, subchapter C, part 164, subpart E, section 164.512, clause (j), released to an external researcher solely for purposes of medical or scientific research only as follows:

(1) health records generated before January 1, 1997, may be released if the patient has not objected or

15 Under HIPAA, these conversations are not limited to mental health.

16 Aligns disclosure for research purposes with HIPAA.
does not elect to object after that date;
(2) for health records generated on or after January 1, 1997, the provider must:
   (i) disclose in writing to patients currently being treated by the provider that health records, regardless
   of when generated, may be released and that the patient may object, in which case the records will not
   be released; and
   (ii) use reasonable efforts to obtain the patient’s written general authorization that describes the release
   of records in item (i), which does not expire but may be revoked or limited in writing at any time by the
   patient or the patient’s authorized representative;
(3) the provider must advise the patient of the rights specified in clause (4); and
(4) the provider must, at the request of the patient, provide information on how the patient may
   contact an external researcher to whom the health record was released and the date it was released.
(b) Authorization may be established if an authorization is mailed at least two times to the patient’s last
   known address with a postage prepaid return envelope and a conspicuous notice that the patient’s
   medical records may be released if the patient does not object, and at least 60 days have expired since
   the second notice was sent.

Subd. 2. Duties of researcher. In making a release for research purposes, the provider shall make a
reasonable effort to determine that:

(1) the use or disclosure does not violate any limitations under which the record was collected;
(2) the use or disclosure in individually identifiable form is necessary to accomplish the research or
   statistical purpose for which the use or disclosure is to be made;
(3) the recipient has established and maintains adequate safeguards to protect the records from
   unauthorized disclosure, including a procedure for removal or destruction of information that identifies
   the patient; and
(4) further use or release of the records in individually identifiable form to a person other than the
   patient without the patient's consent is prohibited.

144.296 COPIES OF VIDEOTAPES.17
A provider may not release a copy of a videotape of a child victim or alleged victim of physical or sexual
abuse without a court order under section 13.03, subdivision 6, or as provided in section 611A.90. This
section does not limit the right of a patient to view the videotape.

144.297 INDEPENDENT MEDICAL EXAMINATION.18
Sections 144.291 to 144.298 apply to the subject and provider of an independent medical examination
requested by or paid for by a third party. Notwithstanding section 144.293, a provider may release
health records created as part of an independent medical examination to the third party who requested
or paid for the examination.

17 See Footnote 3.
18 See Footnote 3.
**144.298 PENALTIES.**

Subdivision 1. **Licensing action.** A violation of sections 144.291 to 144.298 may be grounds for disciplinary action against a provider by the appropriate licensing board or agency.

Subd. 2. **Liability of provider or other person.** A person who does any of the following is liable to the patient for compensatory damages caused by an unauthorized release or an intentional, unauthorized access, plus costs and reasonable attorney fees:

1. negligently or intentionally requests or releases a health record in violation of sections 144.291 to 144.297;

2. forges a signature on a consent form or materially alters the consent form of another person without the person's consent;

3. obtains a consent form or the health records of another person under false pretenses; or

4. intentionally violates sections 144.291 to 144.297 by intentionally accessing a record locator or patient information service without authorization.

Subd. 3. **Liability for record locator or patient information service.** A patient is entitled to receive compensatory damages plus costs and reasonable attorney fees if a health information exchange maintaining a record locator or patient information service, or an entity maintaining a record locator or patient information service for a health information exchange, negligently or intentionally violates the provisions of section 144.293, subdivision 8.19

**Align MN law with HIPAA for insurance consent purposes**

1. Repeal section 13.05, subdivision 4a(7)

2. Section 72A.501, subdivision 4, is amended to read:
   Subd. 4. **Authorization; noninsurers.** If an authorization is submitted to an insurer, insurance-support organization, or insurance agent by a person other than an insurer, insurance-support organization, or insurance agent, the authorization must be dated, signed by the person, and obtained one year or less before the date a disclosure is sought. Unless otherwise required by law, this authorization does not expire, unless an expiration date or event is specified in the authorization.

3. Section 72A.502, subdivisions 6 and 12, are amended to read:
   Subd. 6. **Other laws or order.** Personal or privileged information may be disclosed without a written authorization if permitted or required by another state or federal law or regulation or in response to a facially valid administrative or judicial order, including a search warrant or subpoena.

   Subd. 12. **Notice.** Whenever an insurer, insurance agent, or insurance-support organization discloses personal or privileged information about a person that requires the written

19 Removed record locator related penalties.
authorization of that person under this section, the insurer, insurance agent, or insurance-support organization shall notify that person in writing within ten days of the date the information was disclosed. The notification must specify the identity of the person to whom information was disclosed and the nature and substance of the information that was disclosed. A notice is not required to be given under this subdivision if an insurer is disclosing personal information for underwriting purposes to another insurer, or to an insurance-support organization if the person had signed an authorization authorizing the disclosure. A notice is not required under this subdivision if the disclosing entity is subject to and complies with the provisions in Code of Federal Regulations title 45, chapter A, subchapter C, part 164, subpart D, sections 164.400 to 164.414.

**Align relevant consent provisions in the Data Practices Act with HIPAA**

Section 13.05, subdivision 4, is amended to read:

> Subd. 4. Limitations on collection and use of data. Private or confidential data on an individual shall not be collected, stored, used, or disseminated by government entities for any purposes other than those stated to the individual at the time of collection in accordance with section 13.04, except as provided in this subdivision.

(a) Data collected prior to August 1, 1975, and which have not been treated as public data, may be used, stored, and disseminated for the purposes for which the data was originally collected or for purposes which are specifically approved by the commissioner as necessary to public health, safety, or welfare.

(b) Private or confidential data may be used and disseminated to individuals or entities specifically authorized access to that data by state, local, or federal law enacted or promulgated after the collection of the data.

(c) Private or confidential data may be used and disseminated to individuals or entities subsequent to the collection of the data when the responsible authority maintaining the data has requested approval for a new or different use or dissemination of the data and that request has been specifically approved by the commissioner as necessary to carry out a function assigned by law.

(d) Private data may be used by and disseminated to any person or entity if permitted or required under the Health Insurance Portability and Accountability Act of 1996, title II, subtitle F, as amended, including federal regulations adopted under that act or if the individual subject or subjects of the data have given their informed consent. Whether a data subject has given informed consent shall be determined by rules of the commissioner.

The responsible authority may require a person requesting copies of data under this paragraph to pay the actual costs of making and certifying the copies.

(e) Private or confidential data on an individual may be discussed at a meeting open to the public to the extent provided in section 13D.05.

Section 13.3805, subdivision 1, is amended to read:

Subdivision 1. Health data generally. (a) Definitions. As used in this subdivision:

(1) "Commissioner" means the commissioner of health.

(2) "Health data" are data on individuals created, collected, received, or maintained by the Department of Health, political subdivisions, or statewide systems relating to the identification, description,
prevention, and control of disease or as part of an epidemiologic investigation the commissioner designates as necessary to analyze, describe, or protect the public health.

(b) Data on individuals. (1) Health data are private data on individuals. Notwithstanding section 13.05, subdivision 9, health data may not be disclosed except as provided in this subdivision and section 13.04.

(2) The commissioner or a community health board as defined in section 145A.02, subdivision 5, may disclose health data to the data subject's physician as necessary to locate or identify a case, carrier, or suspect case, to establish a diagnosis, to provide treatment, to identify persons at risk of illness, or to conduct an epidemiologic investigation.

(3) With the approval of the commissioner, health data may be disclosed to the extent necessary to assist the commissioner to locate or identify a case, carrier, or suspect case, to alert persons who may be threatened by illness as evidenced by epidemiologic data, to control or prevent the spread of serious disease, or to diminish an imminent threat to the public health.

(4) If permitted or required under the Health Insurance Portability and Accountability Act of 1996, title II, subtitle F, as amended, including federal regulations adopted under that act.

(c) Health summary data. Summary data derived from data collected under section 145.413 may be provided under section 13.05, subdivision 7.

Section 13.384, subdivision 3, is amended to read:

Subd. 3. Classification of medical data. Unless the data is summary data or a statute specifically provides a different classification, medical data are private but are available only to the subject of the data as provided in sections 144.291 to 144.298, and shall not be disclosed to others except:

(a) pursuant to section 13.05;
(b) pursuant to section 253B.0921;
(c) pursuant to a valid court order;
(d) to administer federal funds or programs;
(e) to the surviving spouse, parents, children, siblings, and health care agent of a deceased patient or client or, if there are no surviving spouse, parents, children, siblings, or health care agent to the surviving heirs of the nearest degree of kindred;
(f) to communicate a patient's or client's condition to a family member, health care agent, or other appropriate person in accordance with acceptable medical practice, unless the patient or client directs otherwise; or
(g) as otherwise required by law;
(h) as permitted or required under the Health Insurance Portability and Accountability Act of 1996, title II, subtitle F, as amended, including federal regulations adopted under that act.

Section 13.386, subdivision 3, is amended to read:

Subd. 3. Collection, storage, use, and dissemination of genetic information. (a) Unless otherwise expressly provided by law, genetic information about an individual:

(1) may be collected by a government entity, as defined in section 13.02, subdivision 7a, or any other person only with the written informed consent of the individual;
(2) may be used only for purposes to which the individual has given written informed consent;
(3) may be stored only for a period of time to which the individual has given written informed consent; and
(4) may be disseminated only:
(i) with the individual's written informed consent; or
(ii) if necessary in order to accomplish purposes described by clause (2). A consent to disseminate genetic information under item (i) must be signed and dated. Unless otherwise provided by law, such a consent is valid for one year or for a lesser period specified in the consent.
(b) Newborn screening activities conducted under sections 144.125 to 144.128 are subject to paragraph (a). Other programs and activities governed under section 144.192 are not subject to paragraph (a). (c) Notwithstanding clause (a), genetic information may be collected, used, stored, or disseminated as permitted or required under the Health Insurance Portability and Accountability Act of 1996, title II, subtitle F, as amended, including federal regulations adopted under that act.

Minnesota Statutes, section 13.46, subdivision 2, is amended to read:

Subd. 2. General. (a) Data on individuals collected, maintained, used, or disseminated by the welfare system are private data on individuals, and shall not be disclosed except: (1) according to section 13.05; (2) according to court order; (3) according to a statute specifically authorizing access to the private data; ...

(31) to a health care provider governed by sections 144.291 to 144.298, to the extent necessary to coordinate services.

(32) to the chief administrative officer of a school to coordinate services for a student and family; data that may be disclosed under this clause are limited to name, date of birth, gender, and address; or

(33) to county correctional agencies to the extent necessary to coordinate services and diversion programs; data that may be disclosed under this clause are limited to name, client demographics, program, case status, and county worker information.

(34) as permitted or required under the Health Insurance Portability and Accountability Act of 1996, title II, subtitle F, as amended, including federal regulations adopted under that act.

Private classification for all health records held by government entities

A new section in Minn. Stat., Ch. 144, is added to read:

Section 13.388. Privacy of health records. A health record, as defined in section 144.292, subdivision 2(c), is private data on individuals. Notwithstanding section 13.05, a health record may not be disclosed except as provided in this chapter.

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20 Consider adding a catch-all private classification for health records that applies to all government entities whether or not they are HIPAA covered entities or not.